



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 103 OF 2015

IN THE MATTER OF THE ESTATE OF BETH WARUGURU KAMAU (DECEASED)

MISHECK NJUKIA GICHANE.....PETITIONER

AND

ZIPPORAH WANJIKU MUIGAI.....1ST CROSS-PETITIONER

MARGARET WAMBUI KAMAU.....2ND CROSS-PETITIONER

R U L I N G

1. The petition for grant of letters of administration and corresponding cross-petition were filed about one month apart, by **Misheck Njukia Gichane** (petitioner) and **Zipporah Wanjiku Muigai** jointly with **Margaret Wambui Kamau**, respectively (cross-petitioners). The three are some of the children of the late **Beth Waruguru Kamau** who died intestate on 19th September, 2006.

2. The cross petition was filed before the petition could be processed and gazetted as required under Section 67 of Law of Succession Act and Rule 7(4) of the Probate and Administration Rules.

3. From the cross petition, affidavits by **John Thuku Maina** (grandson to deceased and son of **Stanley Maina Gichane**) and the petitioners' affidavits filed on 6th December, 2015 and 9th February 2017, there can be no dispute that the deceased was survived by four children, namely:-

1. Misheck Njukia Gichane
2. Stanley Maina Gichane
3. Zipporah Wanjiku Muigai
4. Margaret Wambui Kamau

Two married sons predeceased her, namely:-

- a) David Kamau Gichane
- b) John Thuku Gichane

4. However, the petitioner admittedly excluded the names of his three surviving siblings in the affidavit supporting the petition. Instead, he listed as surviving the deceased, himself, **Mary Wangui Kamau** and

Esther Wangui Thuku, the latter two being widows of the two deceased sons namely **David Kamau Gichane** and **John Thuku Gichane**. Also listed as a beneficiary is a son to **Stanley Maina Gichane**, namely **John Thuku Maina**. The widows of the two sons of the deceased and **John Thuku Maina** were described in the petition as sons and daughters of the deceased.

5. The consent to making of a grant is also signed by **Mary Wangui Kamau, Esther Wangui Thuku** and **John Thuku Maina**. The latter has, by his affidavit filed pursuant to the cross petition, disputed that he gave consent as purported therein. Evidently, the consent of the cross petitioners and **Stanley Maina Gichane** was not sought.

6. The objectors were clearly not involved in the institution of the cause, nor their brother **Stanley Maina Gichane**, said to reside in the USA. Under Section 51(g) of the Law of Succession Act, a petitioner for a grant of letters of administration ought to disclose the names and addresses of all surviving spouses and children of the deceased.

7. The provisions of Section 66 of the Law of succession Act set out the priority of certain persons to administer the estate of an intestate deceased person as follows:-

“when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:-

a) Surviving spouse or spouses, with or without association of other beneficiaries;

b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by Part V;

c) The Public Trustee; and

d) Creditors

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

8. In this case, the deceased was survived by her children and no spouse, hence priority is derived from the respective beneficial interest. In this regard, Section 38 Laws of Succession Act provides that:-

“where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

9. In this case, therefore, the petitioner and his siblings rank equally in priority as beneficiaries of the estate of the deceased. **John Thuku Maina** ranks lowly compared to his father **Stanley Maina Gichane** himself a son who survived the deceased. It is incredible that the petitioner has claimed otherwise in the affidavit filed on 6th December, 2015, supposedly because, **Stanley Maina Gichane** resides in the USA. Moreover, there is no explanation why the petitioner presented the said nephew and two widows of his brothers as son and daughters of the deceased, respectively.

10. Equally ingenious is the assertion by the petitioner that the two daughters of the deceased have no role in the administration of the estate of the deceased because they are already married. The definition of a child in the Law of Succession Act does not distinguish between a male or female child, nor can any child be discriminated against on grounds of sex or marital status (see Article 27 of the Constitution).

11. Further claims that the land parcels comprising the estate of the deceased have been distributed and disposed of appear to contradict the contents of the copies of title documents and search certificates

attached to the petition. The concerned properties are still in the name of the deceased.

12. On the face of it, the petitioner appears inclined to keep his admitted siblings out of the administration of the estate of their mother. The reasons are not difficult to discern. The original letter of introduction from the chief, Hell's Gate location, dated 4th March, 15 and presented with the petition purported to distribute the deceased's estate among the beneficiaries listed in the petition. This letter was withdrawn by the chief and an apology made to the Deputy Registrar vide the chief's subsequent letter of 18th June, 2015, for the purported distribution and exclusion of the daughters of the deceased in the first letter. That distribution, by which the petitioner stood to be the key beneficiary, was replicated in the petition.

13. The duties of an administrator are fiduciary in nature and therefore call for honesty and integrity (**see Section 83 of the Law of Succession Act**) and in the execution of his duties, the administrator has wide powers under Section 82 of the Law of Succession Act including the selling or turning to account of all or any part of assets of the estate.

14. The position adopted by the petitioner in these proceedings as well as his proven conduct reveal a dishonest character apparently motivated by personal benefit at the expense of other beneficially entitled persons. In my view, he is not a suitable person for appointment as an administrator under Section 66 of the Law of Succession Act.

15. However, as stated earlier, the petition herein had not been published as required by the law when the cross petition was filed. Thus, in as much as the court is inclined to view the cross petition favourably, Section 67 of the Law of Succession Act forbids the making of a grant of representation before a notice of the petition is published in the Kenya Gazette, the aim being to give notice to potential objectors.

16. In the circumstances, the orders that commend themselves to the court are that:-

- a) The petition filed by **Misheck Njuki Gichane** is disallowed on account of deliberate misrepresentation and non-disclosure of material information.
- b) The cross petition by **Zipporah Wanjiku Muigai** and **Margaret Wambui Kamau** is to be processed and published in compliance with Section 67 of the Law of Succession Act.

17. For the avoidance of doubt, the two widows of the two deceased sons of **Beth Waruguru Kamau** are to be deemed and included as beneficiaries of the estate for the purposes of this cause and must be involved as such. Each party will bear own costs.

Delivered and Signed at Naivasha this 29th day of November, 2017.

In the presence of:-

Petitioner in person

Mr. Terer holding brief for Mr. Rono for the Protestors/Cross Petitioners

Court clerk – Barasa

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C. MEOLI

JUDGE